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COMMONWEALTH of VIRGINIA

Virginia Public Guardian & Conservator Advisory Board

1610 Forest Avenue, Suite 100
Richmond, Virginia 23229

MEETING MINUTES (DRAFT)
June 25, 2009

Members Present
Paul Aravich, PhD, Chairman, Kirby Fleming, Judge Aundria Foster, Alisa Moore, Judith Koziol, John Powell, Esq., Kathy Pryor, Esq., Janis Selbo, Cynthia Smith, MSSW, Dana Traynham, Esq., Erica Wood, Esq., Lawrence Zippin

Members Absent
Gail Nardi, Nancy Mercer, LCSW, Thelma Bland Watson, PhD

Guests
Carter Harrison, State Public Policy Director, Alzheimer's Association of Greater Richmond
Linda Redmond, PhD, Program Manager, Virginia Board for People With Disabilities
Paula K. Kupstas, PhD, Virginia Center on Aging
Abiodun Otolorin, student, Eastern Virginia Medical School

VDA Staff
Faye D. Cates, MSSW, Guardianship Program Specialist
Janet James, Esq., Legal Services Director and Guardianship Program Coordinator
Jackie Taggart, Administrative Assistant
Charlotte Arbogast, Social Work Student Intern, Lynchburg College

Meeting Called to Order
The Chairman called the meeting to order at 10:10 a.m. Introductions were made.

Review/Approval April 2, 2009 Board Meeting Minutes
The minutes were approved with the following correction: page 5, effective July 1, 2009, name of Virginia Department of Mental Health, Mental Retardation and Substance Abuse Services will be changed to the Virginia Department of Behavioral Health and *Developmental* Services. Motion to approve the minutes by Lawrence Zippin and seconded by John Powell.

Financial Report: Advisory Board Fund - Faye Cates
The Board received a report of expenditures as of April 2009. Upcoming expenses include renewal of Board membership in the National Guardianship Association (NGA) and the cost of the Chairman attending the 2009 National Conference on Guardianship sponsored by the NGA in Las Vegas, NV, October 3-6, 2009. Ms. Cates was instructed to process the registration form for the conference.

Program Regulation Revision Discussion Continued - Janet James
Ms. James reviewed 22VAC5-30-30 D – Client ratio to paid staff. She requested assistance from the Board in developing guidelines for the waiver provision indicated in the statute. The Board established an ad hoc committee to work on this task: The Chairman, Judge Foster, Ms. Koziol, Mr. Powell, and Ms. Wood. Timeline: Ms. James suggested they start in August, with a goal to present the final waiver guidelines at the December 3, 2009, Board meeting.

Central Virginia Training Alliance to Stop Elder Abuse, Neglect and Exploitation
Paula K. Kupstas, PhD, Virginia Center on Aging
Dr. Kupstas provided a handout and PowerPoint presentation (see **Attachment A**) In October 2006, the *Central Virginia Training Alliance to Stop Elder Abuse, Neglect and Exploitation* was one of ten grantees nationwide to receive funding from the U. S. Department of Justice on Violence Against Women to pilot a three-year elder abuse initiative for criminal justice professionals. A national training curriculum has been developed to deliver the training, planned for law enforcement, prosecutors and the judiciary. The emphasis of the training is evidence-based testimony, since elders do not always make good witnesses. The project will extend training opportunities to law enforcement and judiciary in the City of Richmond, and Counties of Henrico, Chesterfield and Hanover.

The *Training Alliance* will deliver trainings to law enforcement, send prosecutors to a national training, and offer judges the opportunity to attend a national judicial institute. Participating organizations will also engage in a review of policies and protocols, based on multidisciplinary collaboration, to aid in improving the identification, investigation, prosecution and adjudication of cases of elder abuse, neglect and exploitation.

In 2008 Senior Connections - The Capital Area Agency on Aging, Richmond, Virginia, applied and in October 2008 was awarded a grant to extend the training to direct service providers (community-based advocates, system based advocates, Adult Protective Services (APS) staff, and the aging network). This continuation funding will provide for a training event for service providers and cross-training for a variety of disciplines, conduct a strategic planning process for outreach, service delivery, and staff training, and implement outreach and service delivery to older victims.

Dr. Kupstas noted that:
a. Prosecutors are seeing more cases of financial exploitation.
b. Circuit Court judges are not included in the training initiative. Mr. Powell indicated that this type of training would be beneficial to them, private attorneys who serve as guardians, and Commissioners of Accounts, especially related to financial exploitation.
c. The training does not cover self-neglect, but covers what to be aware of when dealing with elder abuse and exploitation.
d. Research has shown that caregiver stress is not related to elder abuse, and that this is mentioned to solicit sympathy. If stress were a major factor, the caregiver would strike out at others besides the abused. This is seen as manipulative, controlled behavior that is not taken out on others.
e. Emphasis is on APS staff working with law enforcement and prosecutors. Local teams have been established to bring stakeholders together and start dialogue about collaboratively working together.
f. The law enforcement training has been expanded beyond Metro-Richmond to focus on judges.

Systems Change: It has been slow with small steps being made. How can VPGCAB partner with this grant? Dr. Kupstas is developing a legal remedies booklet that will include criminal laws and resources on the state level. She would like the Board's input on resources.

The next training is September 1-2, 2009, in Henrico County. The Board was invited to send a representative and Dr. Kupstas will send the information to Ms. Cates for distribution. She noted that the issue will be sustainability once the grant ends. The Chairman thanked Dr. Kupstas for providing the Board information on this training initiative.

Update: Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (UAGPPJA) - Erica Wood

The Act will address jurisdiction problems. The general objectives are:

- Guardianship orders entered in one state can be recognized or enforced in another.
- Established cases can be efficiently transferred from one state to another.
- Initial jurisdiction to appoint a guardian fixed in the court of one and only one state.

Ms. Wood indicated that the Act will only work if all states adopt it. It allows judges in different states to talk to each other, which is a key multi-state problem.

Status: Twelve (12) states have enacted the Act, an additional ten (10) states have introduced it. In Virginia the Virginia Bar Association has formed a subcommittee to review the Act, headed by Nancy Rogers. The subcommittee has not met yet. Ms. Wood noted that Virginia likes to study issues first, so it is unlikely the Act will be part of the 2010 legislative agenda. She noted that the original bill was 100 pages, but it is a shorter bill now. She suggested that the Board might want to go on record in support of the Act once more is known about it and what comes out of the review process in Virginia. The Chairman suggested the Board table the issue until Ms. Wood advises it is the proper time to act.

Public Comment

- Mr. Harrison advised the Board to comment on UAGPPJA now instead of waiting for the Virginia Bar review process. He also noted that the current administration ends shortly after the Virginia General Assembly convenes, which will have an impact on the legislative process.

  Legislation on Advance Directive and Mental Health Treatment (SB 1142 Advance Health Care Directive): A letter was drafted to the Governor by Ms. Wood, stressing the inconsistent language regarding private guardian and public guardian admission of clients for mental health treatment. Mr. Harrison suggested that on the second page, more explanation and/or reason is needed when addressing the Board's recommendation for a provision for decision-making by a solid "close friend" and the "unbefriended."

- Abiodun Otolorin, a Nigerian student from Eastern Virginia Medical School, thanked the Chairman for bringing him to observe the Board meeting.

Committee Reports

- **Planning and Development Committee, Janis Selbo, Chairman**
  a. Outcome Measures for the Board's Strategic Plan
  Ms. Selbo asked Board members to review the Board's June 26, 2008 Strategic Plan and fulfill their roles where indicated. See **Attachment B** for a copy of the Plan.

b. Revised Program Regulation Impact of Program Guidelines
Ms. Cates requested the report be tabled, as she has been unable to meet with Ms. James to address this issue. She will report at the September 24, 2009 Board meeting.

c. Person-Centered Planning:
Ms. Traynham reported on models for person-centered planning (PCP), noting that Virginia is on the forefront of the issue. PCP considers what is important to the person, not necessarily what is important for the person. This is the way service providers should think about service delivery, instead of the medical model that focuses on what is wrong with the person. She has assembled a binder of information on the subject that she will share with the Board.

PCP information can be found on the Department of Mental Health, Mental Retardation and Substance Abuse Services (DMHMRSAS) website. Ms. Redmond indicated information is on the website of Marilyn Tavenner, Secretary of Health and Human Resources; and that the Systems Transformation Grant was to promote PCP training.

Ms. Moore informed the group that for two years Mt. Rogers Community Services Board (CSB) has provided PCP training; and along with the various websites there are many tools available to assist in increasing awareness on this model of practice.

Possible PCP training resources identified:
a. Ms. Traynham suggested Susan Elmore at DMHMRSAS as a presenter for the annual fall public guardian program (PGP) training sponsored by VDA.
b. Ms. Smith said her agency, DMHMRSAS, has made PCP a priority under the leadership of Lee Price, Director, Office of Mental Retardation. In 2009 he implemented PCP in the 40 CSBs.
c. Another resource identified for training was the Virginia Commonwealth University Department of Disability Training.

- **Health Care Medical Decision-Making Authority Committee, Paul Aravich**
SB 1142 Advance Health Care Directive – Revises Virginia Health Decision Act Effective July 1, 2009

Dr. Aravich provided a PowerPoint presentation (see **Attachment C**). The advance directive (AD) is all about planning for the future to help people who will have needs down the road. The definition of health care as part of the new law now includes psychiatric terms and other terms related to mental health treatment. The mental illness definition now includes other mental or physical disorders that include the target population of the public guardian program. He indicated this is a radical shift in thinking about health care decision-making.

Focus of the discussion included:
a. The etiology of impaired decision-making;
b. The new law as related to challenging behavior;
c. Behavioral versus psychiatric AD;
d. The benefit of an AD in facilitating treatment before a crisis occurs;
e. The use of the AD; and
f. The impact on the new law on public guardian programs.

Ms. Traynham shared that under the new law public guardians cannot prepare health care ADs and that the AD is written:
- For the person in case capacity is lost.

- To inform health care providers.
- For loved one so they will know what the person wants done once incapacitated.

Mr. Powell noted that once a Power-of-Attorney is identified health professionals will engage this agent as surrogate decision-maker. He encourages his clients to review the language in the AD and understand its implications. His clients are advised to constantly talk to family members about the content of the AD, which will eliminate possible conflict when health care decision-making is required.

Ms. Cates noted that the focus of the sixteen (16) participants of Virginia's Public Guardian and Conservator Program is having written policy for end-of-life decision-making, as required by program regulation (22VACS5-30-30 F.5, Services), and the current compliance review process will verify that these policies are established.

- **Legislative Committee, Kathy Pryor, Chair – Legislative Update**
  Draft Letter to Governor – Legislation on Advance Directive & Mental Health Treatment

New provisions enacted in 2009 in SB 1142 Advance Health Care Directive §37.2-805.1(B) expands the authority of the guardian to admit an incapacitated person to a mental health facility, with consent of the client. However, the public guardianship statute §2.2-713 in stating minimum requirements for local public guardianship programs specifically provides that "A public guardian shall not have authority to admit an incapacitated person to a psychiatric hospital or mental health facility without a civil commitment proceeding, or to approve or authorize a sterilization procedure except when specific authority has been given pursuant to a proceeding in circuit court." The Board submits that these two provisions are in conflict, and that public guardians should not have different authority than private guardians. A letter has been drafted to the Governor recommending that the language in §2.2-713 be changed to conform to §37.2-805.1(B). Ms. Pryor has spoken to Steven Rosenthal, Chairman of the Advance Directive Committee who indicated this omission was an oversight.

The Board is also concerned about the ambiguous language that states "Unless the guardian has a professional relation with the incapacitated person...the court's order may authorize the guardian to consent to the admission of the person to a facility..." Requested in the letter is that there be a review of this language for clarity.

The bill as originally introduced included two new provisions under § 54.1-2986, "Procedure in Absence of an Advance Directive," which was struck from the enacted language. The code sets out a hierarchy of family members that may make health care decisions on behalf of an incapacitated person who does not have an AD. But there is no provision for a person who has no family. The letter suggested language that could be added to the statute that covers individuals familiar with the incapacitated person's religious beliefs and basis values and any preferences previously expressed. Some 22 states have such a "close friend" provision in their health care decision-making law. The letter notes that the Board would like these other entities included in the process, as such inclusion would open more slots to enroll public guardian clients. The letter noted provisions that will lessen the need for public guardians. The Chairman commended Ms. Wood, Ms. Pryor and Mr. Powell for their collaboration on draft letter.

Ms. Pryor informed the Board that there is an AD form on the VDA website, and that authority to admit to a mental health facility is a positive change.

Mr. Powell noted that his orders include specific language covering HIPPA, as well as language for failing to follow provisions. Further he would like the Board to pursue Continuing Legal Education (CLE) credits for lawyers on this topic.

Mr. Powell offered a motion to proceed with mailing the letter, which was seconded by Ms. Smith. There was discussion about Board protocol for contacting the Governor's Office and legislators about issues impacting public guardianship. Ms. Cates will determine protocol and advise the Chairman on how to proceed with the letter.

Other Business

- The Chairman attended a meeting of the Jewish Family Services of Tidewater Multidisciplinary Panel (MDP), which was well attended and diverse in representation. Everyone participated in the client review process, and person-centered planning was utilized. End-of-life issues were discussed and ethical decision-making was observed. The MDP conducted an annual review of 20 cases.

  One issue the MDP share with the Board: The need for the guardian to return to court to become conservator if untapped resources are discovered. Why can't there be a dual order if this occurs, automatically making the guardian the conservator. It was noted that the issue of bonding for conservatorship may prohibit such a provision.

  Another issue from the MDP meeting: If a person receives funding for care from local public resources, e.g., auxiliary grants, are they eligible for public guardianship. Ms. Selbo will investigate how many indigent people quality for the service, including people who are receiving other services.

- Mr. Harrison advised the Board that the Commission on Community Integration of the Alzheimer's Association will seek their input on the need for guardianship. The Commission will also contact other state agencies for information.

Agenda Items September 24, 2009 Board Meeting:

How Many Indigent People Qualify For The Public Guardian Services, Including People Who Are Receiving Other Public-Funded Services - Janis Selbo

Protocol For The Board To Comment On Legislation – Faye Cates

Health Care Decision-Making – Erica Wood (Tabled at April 2, 2009 Board meeting)

Update: Uniform Adult Guardianship And Protective Proceedings Jurisdiction Act (UAGPPJA) - Erica Wood

Update: June 26, 2008 Strategic Plan Task - Janis Selbo

Next Board Meeting – September 24, 2009

Adjournment: The meeting adjourned at 2:15 p.m.

_____

Erica Wood, Secretary

Attachment A

Central Virginia Training Alliance to Stop Elder Abuse, Neglect and Exploitation

Paula K. Kupstas, PhD
Virginia Center on Aging

Central Virginia Training Alliance to Stop Elder Abuse, Neglect and Exploitation

Grant Program:	Enhanced Training and Services to End Violence Against and Abuse of Women Later in Life Program (formerly the Training Grants to Stop Abuse and Sexual Assault Against Older Individuals or Individuals with Disabilities Program)
Sponsor:	U.S. Department of Justice, Office on Violence Against Women
Jurisdictions served:	City of Richmond and Counties of Chesterfield, Hanover, and Henrico
Timeframe:	October 1, 2006 – September 30, 2009 (Initial Award) October 1, 2008 – September 30, 2010 (Continuation Award)

Why Elder Abuse is a Significant Issue in Our Community: From July 1, 2007 to June 30, 2008, Departments of Social Services in the City of Richmond and the Counties of Chesterfield, Hanover and Henrico received a total of 1,150 reports of abuse of persons aged 60 and older. This is just the tip of the iceberg.

The National Elder Abuse Incidence Study found that for every one case of elder abuse, neglect and exploitation reported to authorities, about five more go unreported. Data on elder abuse in domestic settings suggest that 1 in 14 incidents, excluding incidents of self-neglect, come to the attention of authorities. The Central Virginia Training Alliance hopes to remedy this problem by integrating elder abuse awareness training with a plan for revising systemic policies and procedures.

Purpose: The Training Alliance will deliver trainings to law enforcement, send prosecutors to a national training, and offer judges the opportunity to attend a national judicial institute. Participating organizations also will engage in a review of policies and protocols, based on multidisciplinary collaboration, to aid in improving the identification, investigation, prosecution and adjudication of cases of elder abuse, neglect and exploitation.

Continuation funding was awarded in October 2008 to provide a training event for service providers and cross-training for a variety of disciplines, conduct a strategic planning process for outreach, service delivery, and staff training, and implement outreach and service delivery to older victims.

The following have signed the Memorandum of Understanding committing to the project:

<u>Law Enforcement</u>
Ashland Police Department
Chesterfield County Police Department
Henrico County Division of Police
Henrico County Sheriff's Office
Richmond Police Department
Richmond Sheriff's Office
Virginia Commonwealth University Police Department

Office of the Commonwealth's Attorney
Chesterfield County Office of the Commonwealth's Attorney
Hanover County Office of the Commonwealth's Attorney
Henrico County Office of the Commonwealth's Attorney
Richmond Office of the Commonwealth's Attorney

Domestic Violence/Sexual Assault Programs
Chesterfield Sexual and Domestic Violence Resource Center
Hanover Safe Place
Safe Harbor
YWCA of Richmond VA

Programs serving older adults
Chesterfield-Colonial Heights Department of Social Services
Chesterfield County Office of the Senior Advocate
Hanover County Department of Social Services
Henrico County Department of Social Services
Richmond Department of Social Services
Richmond Senior and Special Needs Advocate
Senior Connections: The Capital Area Agency on Aging

Project Administration/Management
Virginia Commonwealth University/Virginia Center on Aging
Senior Connections: The Capital Area Agency on Aging (fiscal mgt of 2008 award)

The following organizations have written letters of support, committing to sustain law enforcement training after the conclusion of the project:

Virginia Coalition for the Prevention of Elder Abuse
Virginia Crime Prevention Association
Virginia Department of Criminal Justice Services
Virginia Office of the Attorney General, TRIAD and Citizen Outreach

For more information, contact:
Paula Kupstas, PhD
Virginia Center on Aging
P.O. Box 980229
Richmond, VA 23298-0229
Phone: (804) 828-1525
Email: pkupstas@vcu.edu

This project is supported by Grant Nos. 2006-EW-AX-K002 and 2008-EW-AX-K002 awarded by the Office on Violence Against Women, US Dept. of Justice. The opinions, findings, conclusions, and recommendations expressed in this publication are those of the author(s) and do not necessarily reflect the views of the Dept. of Justice, Office on Violence Against Women.

Central Virginia Training Alliance to Stop Elder Abuse, Neglect and Exploitation

Virginia Public Guardian and Conservator Advisory Board Meeting

June 25, 2009

1

Presenter

- Paula Kupstas, PhD,
  Project Director for Elder Abuse Training Grant
  Virginia Center on Aging
  Virginia Commonwealth University
  P.O. Box 980229
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2

Central Virginia Training Alliance to Stop Elder Abuse, Neglect and Exploitation

Funded through the grant program:

Enhanced Training and Services to End Violence Against and Abuse of Women Later in Life Program

provided by:

U.S. Department of Justice

Office on Violence Against Women

http://www.usdoj.gov/ovw

3

Central Virginia Training Alliance to Stop Elder Abuse, Neglect and Exploitation

In 2006, one of 10 initiatives nationally to be selected as a pilot training grant awardee.

- Projects provide training to law enforcement, prosecutors and the judiciary
- Partner agencies engage in a review of their own policies and protocols
- Partners work collaboratively
- Emphasis on multidisciplinary approach

4

Enhancing Judicial Skills in Elder Abuse Cases Workshop

- Four-day national judicial institute
- Offered by the National Judicial Institute on Domestic Violence, a partnership of the Family Violence Prevention Fund, the National Council of Juvenile and Family Court Judges, and the U.S. Department of Justice, Office on Violence Against Women

(Two local judges have attended)

5

Prosecuting Elder Abuse Cases

- Three-day national prosecutors' training
- Offered by the National District Attorneys Association/National College of District Attorneys and the Office on Violence Against Women

(Nine prosecutors from metro Richmond area have attended)

6

Elder Abuse Training for Law Enforcement Officers

- Two-day local training for law enforcement
- Curriculum developed by OVW, in partnership with National Clearinghouse on Abuse in Later Life, Federal Law Enforcement Training Center, and National Sheriffs' Association
- Updated to include Virginia laws and local resources
- Multidisciplinary team - prosecution, law enforcement, adult protective services/aging services and domestic violence/sexual assault program.

(210 participants at 7 training events)

Elder Financial Exploitation, Undue Influence, and Investigative Strategies

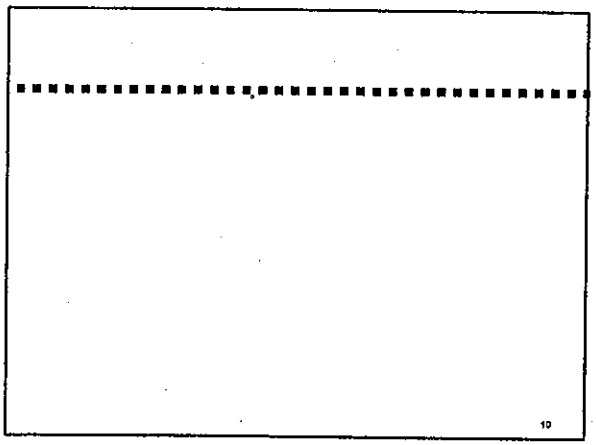
- Two-day advanced training for law enforcement
- Local team developed agenda based on feedback from training participants
- Faculty included:
  - Candace Heisler, JD, former CA prosecutor and elder abuse expert
  - Harry Morgan, MD, President of Center for Geriatric and Family Psychiatry, Inc., Glastonbury, CT

(34 participants)

Central Virginia Training Alliance to Stop Elder Abuse, Neglect and Exploitation

In 2008, received a continuation award for:

- Local training for direct service providers (community based advocates, system based advocates, APS and aging network)
- Strategic planning for outreach and direct service delivery
- Pilot outreach and service delivery



Who Commits Elder Abuse? Grant Focus

- Intimate partners (long-term, new, or late onset)
  - -- Occurs in heterosexual/gay/lesbian relationships
  - -- Includes dating relationships
- Adult children and other family members
- Caregivers
- Others in positions of authority

For purposes of our trainings, our definition excludes victimization by strangers.

11

What is Elder Abuse?

When an older adult experiences:

- Physical abuse
- Neglect
- Sexual abuse and stalking
- Financial exploitation
- Emotional abuse

(Any of the above may co-occur with each other)

12

Who are Victims of Elder Abuse?

- Persons aged over 60+
- Primarily females and some older males
- All racial, ethnic, socio-economic, and religious backgrounds
- Does not include vulnerable or at-risk adults age 18 - 59

13

Where Does Elder Abuse Occur?

- Private residences within community
- Facility settings (4.5 %)

14

Why Does Elder Abuse Occur & Persist?

- Greed
  - Goal is financial exploitation
  - Offender often committing other types of abuse
- Power and control
  - As in domestic violence
  - Pattern of abusive and coercive behaviors and threats used to control victim
  - Actual and assumed power is used

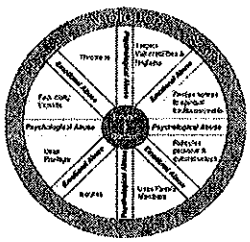
15

Similar Dynamics to Domestic Violence

- Often the tactics used in elder abuse cases are similar to the power and control dynamics used against younger battered women

16

Power and Control Wheel



17

Caregiver Stress

- Providing care can be stressful
- Sometimes the stress is overwhelming and can lead to problems
- Caregivers often experience overeating, lack of sleep, depression etc

18

Reframing Abuse and Caregiver Stress

Not a cause of abuse

- Early research was based on abuser's self-reports
- Abusers used caregiver stress as an excuse to justify their behavior – so they will not be held accountable and to create sympathy for themselves

19

Reframing Abuse and Caregiver Stress

- Everyone experiences stress – most do not abuse, neglect or exploit a parent or partner
- The target is the older adult -- not anyone else
- Generally pattern – not an isolated incident
- We would not tolerate similar circumstances with children or pets

20

9

Collaboration and Systems Change

21

Collaboration and Systems Change Work

- Inviting stakeholders to the table
- Gaining commitment and involvement
- Creating or enhancing multidisciplinary teams in the localities

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- Thank you!
- Questions?
- Comments?

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Attachment B

Virginia Public Guardian and Conservator Advisory Board

Strategic Plan Update
March 4, 2009

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Strategic Planning Update – March 4, 2009
Planning and Development Committee

Strategic Planning Recommendations From the Quality Group

1. Ensure the quality of life of individuals in the public guardian program (PGP) by, e.g.:
   a. Focusing on a person-centered approach that builds on existing **models of practice.**
      Action Steps:
      i. Assure that the local program standards articulate the person-centered approach.
      (Alisa Moore) Target Date: September 30, 2009
   b. Implementing bioethical healthcare decision making training by September 30, 2009, in the following ways:
      Action Steps:
      i. Formulating a knowledge center such as Virginia Institute for Social Services Training Activities (VISSTA), College of Direct Supports, Trilogy, and the Knowledge Center in State Government.
      ii. Promoting partnerships with existing hospital bioethics panels.
      (Paul Aravich) Target Date: September 30, 2009
   c. Using appropriate and effective **assessment review and planning tools to guide person-centered decision-making.**
      Action Steps:
      i. Review existing tools of data including the annual guardianship report, values history form and Uniform Assessment Instrument;
      ii. Review other models;
      (Dana Traynham) Target Date: June 2009 Health Care Medical Decision-Making Authority Committee; September 2009 Full Board
   d. Ensuring guardianship training, including judicial training.
      Action Steps:
      i. Assure the annual program training includes one component that addresses the quality of life.
      (Faye Cates) Target Date: Annually
   e. **Create judicial education program.**
      Action Steps:
      i. Attempt to educate the circuit courts;
      ii. Develop a plan to educate the circuit courts.
      (Paul Aravich) Target Date: September 30, 2009

2. Promote consistent person-centered quality outcomes throughout the state by, e.g.:
   a. Champion Lisa Moore **(EXPLANATION NEEDED)**
   b. Maintaining the 1:20 staff/client caseload ratio as the PGP expands, by the Board reviewing the program regulation, and make recommendations to VDA for the standards for implementing the regulation.
      (Task completed with the revised program regulations, effective 1-1-09)
   c. Reviewing, developing and implementing standards to support local programs.
      Action Steps:
      i. **Refer the draft standards of practice to VDA staff and local programs for comment to assure consistency with revised program regulations.**
      (Faye Cates, Janet James, Public Guardian Programs)
      Target Date: June 2009 VDA and program staff; September 2009 Full Board
   d. Developing mechanisms for ~~integration~~ **implementation** of program standards.
   e. Measuring client outcomes:
      Action Steps:
      i. By the Board defining the kind of information it needs on an annual basis regarding program operations, demographics, client outcomes, and waiting lists.
      ii. Integrating outcomes with the Department of Social Services and other agencies as needed in annual reports.
      (Planning and Development Committee) Target date: June 2009
   f. Ensuring the annual contract renewals include the program standards.

Strategic Planning Recommendations From the Funding Group

Target dates and responsible parties are indicated in parenthesis.

1. Seek full funding for public guardian programs to meet the unmet need:
   a. Documented current unmet need of 1,441 people at a cost of $4.3M
   b. Expansion of funding to meet the needs of a growing population.
      Action Steps:
      i. Presentation to the Joint Commission on Health Care (JCHC).

         (September 2008: Paul Aravich and Gail Nardi)
         Task completed: Board Chair presented at the October 23, 2008 JCHC meeting.
      ii. Development of talking points, fact sheets and stories for stake holders.
         (September 2008: VDA staff to the Board Faye Cates)
         Task completed October 17, 2008
      iii. To identify and meet patrons from the General Assembly
         (VPGCAB Legislative Committee **Annually** ~~September – October 2008~~:)
         Task completed April 2008 – Delegate Bob Brink

2. Expand the capacity of the State public guardian program to serve individuals in all localities in the Commonwealth.
   a. Establish regional partnerships in support of guardian services, working with the Local Long-Term Coordinating Councils, Area Agencies on Aging, Departments of Social Services, and Community Service Boards.

(July 2009: VDA Commissioner and Virginia Area Agencies on Aging)

3. Develop partnerships at the State and local levels to reduce reliance on the public guardianship program by:
   a. Working with the private bar to explore the potential for pro bono petitioning for low-income families in need of guardian services. (July 2009: John Powell and Erica Wood).
   b. Identify additional state partners for other ways to reduce reliance on guardianship, and convene a meeting with, e.g., Virginia Coalition on Aging, the American Association of Retired Persons. (July 2009)
   c. Promoting educational programs to identify less restrictive alternatives to guardianship such as Power of Attorney and Advanced Medical Directives.

Updated 3/4/09 By the Planning and Development Committee

Attachment C

New Options for Behavioral Advance Directives; Implications for Public Guardians

Paul F. Aravich, PhD, Chairman
Virginia Public Guardian and Conservator Advisory Board

June 25, 2009

New Options for Behavioral Advance Directives: Implications for Public Guardians

Paul F. Aravich, Ph.D.

Chair, Virginia Public Guardian & Conservator Advisory Board

Chair of its Health Care Decision Making Com.

*Professor, Eastern Virginia Medical School**

**The views expressed here in are those of the author and do not necessarily reflect those of Eastern Virginia Medical School, the Board or the Dept for Aging*

Overview provided to the Virginia Public Guardian & Conservator Advisory Board 6/25/09

aravicpf@evms.edu

Objectives

- Review the new Virginia health care directives law as it relates to challenging behaviors
- Encourage public guardians to obtain advance directives in the guardianship order related to potential challenging behaviors
- Understand that advance health care directives are part of a bioethical health care decision-making process

2

Outline

- The new health directive law
- Behavioral advance directives:
  - lessons learned from psychiatric advance directives
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- Conclusions

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New law: Revision to Virginia Health Care Decisions Act[1]

- to clarify certain processes
- Senate Bill 1142, Advance Health Care Directive[2]
- Passed
  - Senate conference report 39-Yes 0-No *2/28/09*
  - House conference report 94-Yes 0-N0 *2/28/09*
  - Governor: Approved *3/27/09* Effective 7/01/09
- Published in Acts of the General Assembly
  - 2009 Legislative Session, Chapter 268[2]

[1] *http://www.dhp.state.va.us/dhp_laws/Health%20Care%20Decisions%20Act.doc*

[2] *http://leg1.state.va.us/cgi-bin/legp504.exe?091+ful+CHAP0268+pdf*

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- See Legislative Committee Agenda Item Legislation on Advanced Directives & Mental Health Treatment for further greater detail and clarification

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Health care directives in general: relate to "planning for the future"

- powers of attorney
- revocable living trusts
- guardianships and conservatorships
- advance medical directives
- psychiatric advance directives

Also relate to a bioethically determined decision-making process

Lowder et al. The importance of planning for the future. Care Manag J. 2004 Winter;5(4):235-44

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The agents for advance planning in the Public Guardian Program are the Multi-Disciplinary Panels

As described momentarily,
new law opens up person-centered opportunities

- For Behavioral advance planning as well as
- For Medical advance planning

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New definition of "Health Care" e.g.

- medications; surgery; blood transfusions chemotherapy; radiation therapy
- admission to a hospital, nursing home, assisted living facility, or other health care facility
- life-prolonging procedures and palliative care
- **psychiatric or other mental health treatment**

Quoted from SB-1142 § 54.1-2982. Definitions.

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Causes of an inability to make an informed decision

- **"Mental illness, mental retardation, or any other mental or physical disorder which precludes communication or impairs judgment"**
- A broad definition that includes lots of etiologies

Quoted from SB-1142 § 54.1-2982. Definitions.

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Therefore, the new law:

- Rejects Cartesian dualism
  - Mind and body are independent
- Embraces current consensus in neuroscience
  - Mind & brain are the same

WR Wozniak, Mind & Body...SERENDIP http://serendip.brynmawr.edu/Mind/Descartes

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Inability to make an informed decision: can be caused by many disorders

- Congenital brain injury:
  - Genetic syndromes, e.g., trisomy 21/Down; fragile X
  - Fetal alcohol syndrome
  - Cerebral palsy
  - Autism
  - Prenatal nutritional/metabolic problems
  - Rubella
  - Hydrocephalus, etc.
- Degenerative brain injury:
  - Alzheimer's
  - Parkinson's, Huntington's, etc.

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Inability to make an informed decision: can be caused by many disorders cont.

- Acquired brain injury (ABI):
  - Stroke
  - Traumatic brain injury (TBI)
  - Lack of oxygen (anoxia)
  - Metabolic (liver/kidney) problems
  - Tumors
  - Infections
  - Toxic chemicals
  - Electrical, etc
- Mental illness/chemical dependency

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It can be concluded that behavioral advance directives:

- are relevant to every incapacitated person in the Public Guardian program

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One interpretation of the new law

- Since decision making & health care are impacted by
  - Behavioral conditions as well as by
  - Medical conditions
- Health care directives require both
  - Behavioral advance directives as well as
  - Medical advance directives
  - Even though the term "behavioral advance directive" does not appear in the law

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Psychiatric advance directive: overview

- Legal document in a dozen or so states
- Specifies treatment preferences
  - Before a future incapacitating psychiatric crisis

Gallagher. Psychol Public Policy Law. 1998 Sep;4(3):746-67
Srebnik et al. Psychiatr Serv. 2005 May;56(5):592-8
Campbell & Kisely. Cochrane Database Syst Rev. 2009 Jan 21;(1):CD005963
DeWolf et al. JONAS Healthc Law Ethics Regul. 2008 Jan-Mar;10(1):17-24; quiz 25-6

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Behavioral vs. Psychiatric Advance Directives

- Behavioral advance directive
  - Empirical description
  - w/o reference to an underlying etiology
  - A term not used in the new law or in the literature
- Psychiatric advance directive
  - Clinical description w/ specific associations
  - A term not used in the new law
  - Small but growing literature on its impact

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National Alliance on Mental Illness: Psychiatric Advance Directives

- Four potential benefits
  - Empower consumer
  - Enhance communication: consumer-provider
  - Facilitate treatment before crisis
  - May reduce judicial proceedings
- History: First: Minnesota 1991.
  - Others, e.g.: Alaska, Hawaii, Idaho, Illinois, Maine, NC, NJ, OK, Oregon, SD, TX, UT
- Their use "in its infancy...more unresolved questions than answers..."

Advance Directives. Honberg. National Director for Policy and Legal Affairs
http://www.nami.org/Content/ContentGroups/Legal/Advance_Directives.htm

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Mental Health America of Virginia (MHAV) supports psychiatric advance directives

- ↓ ineffective, unwanted, harmful treatment/action
- ↓ crises causing involuntary treatment/restraint/seclusio
- ↑ autonomy/empowerment
- ↑ communication between all parties
- Treatment preferences are outlined before an incapacitating psychiatric crisis occurs

MHAV policy priorities for the 2009 General Assembly Legislative Session.
http://www.mhav.org/public-policy.php

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Can a Psychiatric Advance Directive be violated?

Yes:

- If it conflicts with "generally accepted community practice standards."
- If the treatments requested are not feasible or available.
- If it conflicts with emergency treatment.
- If it conflicts with applicable law.

Direct quote from National Resource Center on Advance Psychiatric Directives http://www.nrc-pad.org/

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Psychiatric advance directives are clinically useful

Subject details; 106 outpatients (mean age: 42) with at least two psychiatric hospitalizations or emergency department visits within two years. Problems with study: small study

- Preferences:
  - 81% listed desired medications
  - 89% listed ways to de-escalate crisis
  - 46% appointed surrogate decision-maker for the crisis
  - 57% made the directive irrevocable during a crisis
- Overall rating of the advance directives
  - 95% were feasible/useful/consistent w/ best practices

Srebnik et al. Psychiatr Serv. 2005 May;56(5):592-8

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Psychiatric advance directives reduce social workers time & violence?

Study details: Compared previous randomized controlled trials (RCT's); adults with severe mental illness; any form of advance directive vs. standard care. Problems with study: relatively few RCT's to evaluate

- Less social worker time and
  n=160, 1 RCT, weighted mean differences 106.00 [95% CI -156.2 to -55.8]
- Less violent acts
  n=160, 1 RCT, relative risk 0.27 [95% CI 0.1 to 0.9]
  - Implications for challenging behaviors

Campbell & Kisely. Cochrane Database Syst Rev. 2009 Jan 21;(1):CD005963.

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To ↑ use of psychiatric advance directives

- Create more directives to ↑ clinician/system familiarity[1]
- Appointment more surrogate decision-makers[1]
  - But make sure they are actively involved in crisis & access directives[2]
- Disseminate the directive to providers[3]
- Educate providers/case managers[4]
- Engage in joint crisis planning[5]

[1]*Srebnik & Russo. Adm Policy Ment Health. 2008 Jul 18*
[2]*Srebnik & Russo. Psychiatr Serv. 2007 Sep;58(9):1157-63*
[3]*Srebnik & La Fond. Psychiatr Serv. 1999 Jul;50(7):919-25*
[4]*SrebnikPsychiatr Serv. 2003 Jul;54(7):981-6*
[5]*Henderson et al. Psychiatr Serv. 2008 Jan;59(1):63-71*

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Conclusions.
Small but growing Psychiatric Advance Directive data base suggests:

- Benefits of behavioral advance directives
- As part of new health care directives law

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Revision to determine if person is incapable of informed decision making

- incapacity determined by
  - 2 physicians, or
  - 1 physician & 1 licensed clinical psychologist, 1 of whom is not otherwise involved in care of patient;
- 1 physician can declare patient again capable of making an informed decision

Taken from the "Summary as Passed"

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Senate Bill 1142 § 37.2-801. Revised Admission procedures

- Any person alleged to have a mental illness to a degree that warrants treatment in a facility may be admitted to a facility by compliance with one of the following admission procedures:
  - 1. Voluntary admission by the procedure described in § 37.2-805, or;
  - 2. *Admission of incapacitated persons pursuant to § 37.2-805.1;*

Quoted directly from SB 1142

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§ 37.2-805.1 . Admission of incapacitated persons pursuant to advance directives or by guardians.

Quoted directly from SB 1142

A guardian who has been appointed for an incapacitated person pursuant to Chapter 10 (§ 37.2-1000 et seq.) may consent to admission of that person to a facility for no more than 10 calendar days if

- *(i) prior to admission, a physician on the staff of or designated by the proposed admitting facility examines the person and states, in writing, that the person*
  - *(a) has a mental illness,*
  - *(b) is incapable of making an informed decision, as defined in § 54.1-2982, regarding admission, and*
  - *(c) is in need of treatment in a facility;*

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§ 37.2-805.1 . Admission of incapacitated persons pursuant to advance directives or by guardians, cont.

Quoted directly from SB 1142

- *(ii) the proposed admitting facility is willing to admit the person; and*
- *(iii) the guardianship order specifically authorizes the guardian to consent to the admission of such person to a facility, pursuant to § 37.2-1009.*
- *In addition, for admission to a state facility, the person shall first be screened by the community services board that serves the city or county where the person resides or, if impractical, where the person is located.*

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Conclusions regarding the new health care directives law

- It addresses the mind-body dualism problem effectively & creatively
- It will encourage advance directives related to challenging behaviors
- It will mitigate forced removal of incapacitated persons by law enforcement
- It applies to virtually all incapacitated people in the PG program
- Behavioral problems should be more empirically described, rather than as psychiatric or mental illness
- The agents for advance health care directives in the PG program are the multi-disciplinary panels

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Think advance health directives.
Think behavioral advance directives
Remember: "all behavior is a brain thing"

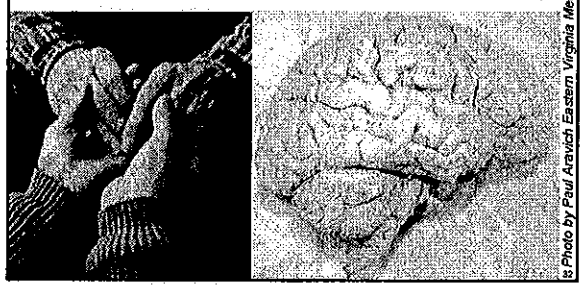

Photo by Paul Aravich Eastern Virginia Medical School

Objectives

- Review the new Virginia health care directives law as it relates to challenging behaviors
- Encourage public guardians to obtain advance related to challenging behaviors in the guardianship order
- Understand that advance health care directives are part of a bioethical health care decision processes

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